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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 MERLIN BV,

Plaintiff,

4 v.

11CV4822 (KMW)

5 LIME WIRE LLC, LIME GROUP LLC,

6 MARK GORTON,

Defendants.

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8
9 New York, N.Y.
October 21, 2011
1:50 p.m.

10 Before:

11 HON. KIMBA M. WOOD
12 HON. JOHN F. KEENAN

District Judges

13 APPEARANCES

14 PRYOR CASHMAN

15 Attorneys for Plaintiff

16 FRANK SCIBILIA

17 CHARLIE LEXTON

Attorney for Plaintiff

18 WILLKIE FARR & GALLAGHER

Attorneys for Defendants

19 TARIQ MUNDIYA

20 TODD G. COSENZA

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1 (In chambers)

2 MR. MUNDIYA: The parties have reached a settlement in
3 the action. The amount of the settlement will remain
4 confidential but the plaintiffs will give a complete release to
5 the defendants, and by a complete release me mean a release by
6 all of the Merlin members. The parties will discuss the
7 wording of a press release, but the concept of a press release
8 will include disclosure that the settlement is commensurate
9 with the settlement that was reached earlier this year with the
10 major record labels and that the Merlin settlement is grounded
11 in the market share that Merlin has.

12 HON. JUDGE WOOD: Can we have that read back.

13 (Record read)

14 MR. LEXTON: When we are talking about the release, we
15 have to work out the mechanics of that.

16 MR. MUNDIYA: Right.

17 MR. LEXTON: Because there are alternative means to
18 doing that.

19 MR. MUNDIYA: We can say the parties will discuss the
20 mechanics of a complete release.

21 MR. SCIBILIA: It's obvious that one of the Merlin
22 members I believe has already settled with you so that
23 obviously wouldn't be included in this part.

24 MR. MUNDIYA: Right. That's a given. To the extent
25 we have settled with other Merlin members, that's separate and

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1 apart from this settlement.

2 MR. LEXTON: On the press release, can we just make it
3 clear that the fact of the settlement itself is something that
4 will be disclosed.

5 MR. MUNDIYA: Yes.

6 MR. LEXTON: The wording of what you said, I would
7 just be happy to say, the level of the settlement is
8 commensurate with the major label settlement with Lime Wire,
9 taking into account market share.

10 MR. MUNDIYA: I think we have to be a little careful
11 that we don't convey the impression that the amount of the
12 settlement is commensurate with the settlement with the major
13 record labels. We will work on the wording.

14 HON. JUDGE KEENAN: The reason I am interrupting is
15 because I worked with the lawyers in arriving at the
16 settlement. The concept is that the settlement is commensurate
17 with the market share. I think the keywords are market share
18 that Merlin enjoyed. Pardon me for interrupting. I think
19 that's the key to it; it's the market share.

20 MR. LEXTON: I understand your point. That's agreed.

21 HON. JUDGE KEENAN: Obviously I know the amount of the
22 settlement and so does Judge Wood.

23 HON. JUDGE WOOD: And I take it as part of this,
24 plaintiff discontinues the action without costs and with
25 prejudice and any pending motions are moot.

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1 MR. SCIBILIA: Yes. We will also be settling
2 copyright infringement claims as well; copyright infringement
3 claims will also be settled.

4 MR. MUNDIYA: When we say complete release, we mean a
5 release of all claims that have been brought and all claims
6 that could have been brought against any of the defendants.

7 Is that agreed?

8 MR. SCIBILIA: Agreed, in connection with the Lime
9 Wire services. If he some how did something we don't know
10 about, crashed a car into his house, we are not settling.

11 MR. MUNDIYA: That's fine.

12 HON. JUDGE WOOD: Anything else?

13 MR. SCIBILIA: That's it.

14 MR. MUNDIYA: No, judge.

15 THE COURT: Congratulations.

16 Thanks to you, Judge Keenan.

17 HON. JUDGE KEENAN: My pleasure.

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